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LABOUR & EMPLOYMENT DEPARTMENT
NOTIFICATION

The 25th October 2011

No. 9581—IR - 46/2010 - L. E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th May 2011 in I.D.. Case No. 32 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Executive Officer, Khurda Municipality, Khurda and its Workman Shri Karunakar Paikaray was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 32 OF 2010

Dated the 25th May 2011

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of Executive Officer, Khurda Municipality, Khurda.	..	First - party—Management
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And

Shri Karunakar Paikaray, S/o Arjuna Paikaray, At/PO. Gurujanga, Dist. Khurda.	..	Second - party— Workman
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Appearances :

For the First - party — Management	..	None
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For the Second - party— Workman himself	..	Shri Karunakar Paikaray
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AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section(1) of Section 10 of the Industrial Disputes Act. 1947(14 of 1947) (for short the Act) have referred the following dispute for adjudication vide their Order No. 4126—ID-46/10 -LE; dated 20-5-2010 :

“Whether the termination of services of Shri Karunakar Paikaray, N.M.R. Peon by the management of Khurda Municipality by way of refusal of employment with effect from dt. 30-04-2009 is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. The case of the second party workman as narrated in the claim statement is that on dt. 12-08-1994, he was appointed by the First party to work as a peon in its establishment. During the tenure of his employment, the workman had been discharging his duties sincerely and satisfactorily. In the year 2009, he had proceeded on leave from dt. 16-06-2009 to 29-06-2009. When he resumed duties on dt. 30-06-2009 he was verbally told that the management had decided not to retain him in service any more. Thus, he was refused employment with effect from dt. 30-06-2009. There was neither compliance of the requirements of Section 25-F of the Act nor was there any disciplinary proceeding against the workman before he was refused employment. Soon after his discontinuation, the workman raised a dispute before the District Labour Office, Khurda. During conciliation proceeding, the management took the stand that the workman has worked from dt. 12-08-2004 to dt. 22-03-2009 and then he was on leave till dt. 30-04-2009. It was further told to the Conciliation Officer that the service of the workman was not extended after dt. 30-04-2009 as per the Resolution of the Management's Council, dated dt. 30-05-2009.

3. The management did not appear before this Tribunal despite of due service of notice calling upon it to submit its written statement. Therefore, the Management has been set *ex parte*.

4. During *ex parte* hearing, the workman has adduced evidence by filing his affidavit containing his evidence in Chief. He has also exhibited three documents. His affidavit evidence contains the averments made in the claim statement. In the absence of any challenge to the affidavit evidence, there is nothing to disbelieve the workman's plea. In the absence of any specific plea from the side of the management, it is to be accepted by this Tribunal that the workman was continuously engaged in the establishment of the First party from dt. 12-08-1994 till dt. 30-04-2009. Ext.1 is a copy of the Resolution passed by the First party which reflects that on dt. 30-05-2009 the Management decided not to further extend the term of employment of the Second party after dt. 30-04-2009. Ext.3 is a copy of the letter of the Executive Officer of the First party addressed to the Asst. Labour Officer, Khurda in which it is clarified that the workman used to get engagement for 44 days which used to be extended from time to time but as per the Resolution of the First party, he was no more engaged in the establishment of the First party. Thus, it becomes clear that the employment of the Second party was brought to an end by not giving him further extension after dt. 30-04-2009. As there is no evidence showing that the Management had followed the provisions contained in Section 25-F of the Act, the termination of service of the workman w.e.f. dt. 30-04-2009 is in contravention of Section 25-F of the Act and therefore, it is illegal.

5. From the term of the reference, it is found that the workman was an N.M.R.. From the exhibited documents, it is found that the term of his employment used to be extended from time to time. There is no evidence as to whether any other person has been engaged by the First party in place of the Second party. The termination of his service appears to be neither legal nor justified.

6. It is the case of the workman that he is not gainfully employed anywhere. The workman

was continuously engaged for about fifteen years but without any justification, he has been removed from employment. Under such circumstances, the proper relief should be reinstatement with 50% of back wages. The Management is, therefore, to reinstate the workman on N.M.R. basis with payment of 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
25-05-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
25-05-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government